

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH THE

CITY OF VIRGINIA BEACH

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and the City of Virginia Beach to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "Regulation" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "General Permit Regulation" means 9 VAC 25-180-10, *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of

Storm Water from Construction Activities.

9. "Virginia Beach" means the City of Virginia Beach, Virginia.
10. "Permit" means VPDES Permit No. VAR101972, a General Permit for Discharges of Storm Water From Construction Activities.

SECTION C: Findings of Facts and Conclusions of Law

1. Sections 62.1-44.5 of the Code and 9 VAC 25-31-50.A of the Regulation prohibit discharges to State waters except in accordance with a Virginia Pollutant Discharge Elimination System permit.
2. Section 9 VAC 25-31-120 of the Regulation requires a stormwater VPDES permit for discharges from construction sites.
3. Section 62.1-44.5 of the Code, Section 9 VAC 25-31-50.B of the Regulation and Part III.G of the Permit require operators of construction sites to report unauthorized discharges.
4. Section 9 VAC 25-180-60 of the General Permit Regulation requires operators of construction sites to submit a registration statement at least two days prior to commencing construction.
5. Section 9 VAC 25-180-70 of the General Permit Regulation, and Part II of the Permit require the development and implementation of storm water pollution prevention plans ("SWPPPs") at regulated construction sites.
6. The SWPPP for the Mt. Trashmore construction site required, among other things, that: (1) offsite sediment transport by vehicles be minimized; (2) soil stockpiles at the site be stabilized; (3) silt fencing sufficient to prevent discharges of sediment be installed at the site; and (4) other erosion control measures sufficient to prevent discharges of sediment be installed at the site.
7. Virginia Beach recently completed recapping of the Mount Trashmore landfill which is located at Edwin Drive and South Boulevard in Virginia Beach. Storm water discharges from this project were the subject of the Permit and discharged into Thalia Creek, a tributary to the Lynhaven River and the Chesapeake Bay.
8. Construction associated with the recapping of Mount Trashmore started the week of January 6, 2003. A registration statement for the project was received from Virginia Beach on February 3, 2003 but was not deemed complete until February 25, 2003, when Virginia Beach notified DEQ that its SWPPP for the project was completed. Coverage under the Permit became effective on February 26, 2003.
9. On January 30, 2003, DEQ documented an unpermitted discharge from the Mount Trashmore Landfill Kid's Cove area (hereinafter referred to as the "Kids Cove area") that flowed offsite to the Southern Blvd. drainage ditch that leads to Thalia Creek. No erosion and sediment control measures were in place during the time that the discharge occurred. The discharge was not reported to DEQ as required.
10. On March 19, 2003, DEQ documented ineffective silt fencing in the Kid's Cove area which did not adequately control the discharge of sediments flowing offsite to the Southern Blvd. ditch. DEQ also documented a failure to minimize transport of sediment

by vehicles in this area (significant ruts were observed on the sides of Kid's Cove area construction entrance). In addition, a failure to minimize transport of sediment by vehicles was documented at the Edwin Drive construction entrance.

11. On March 20, 2003, DEQ documented ineffective control measures which did not adequately control the discharge of sediments flowing offsite to the Southern Blvd. ditch from the southeast corner of Mount Trashmore's visitor parking lot.
12. On April 10, 2003 DEQ documented ineffective sediment control measures in the vicinity of the Kid's Cove area which did not adequately control the discharge of sediments flowing offsite to the Southern Blvd ditch. In addition DEQ documented that soil stockpiles in the vicinity of Kid's Cove were not stabilized or protected with sediment traps.
13. DEQ did not document any detrimental water quality impacts to Thalia Creek, the Lynnhaven River, or the Chesapeake Bay due to the construction activities of the Mount Trashmore Recapping Project.
14. Notice of Violation No. W2003-04-T-0003 was issued to the Virginia Beach on April 28, 2003 for the violations noted above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Virginia Beach, and Virginia Beach agrees to obtain coverage under the General Permit for Storm Water Discharges for Construction Activities prior to initiating any future construction activities at regulated construction sites, to comply with the requirements of the Code and the Regulation with respect to the reporting of unauthorized discharges and to pay a civil charge of \$6,500 in settlement of the violations cited in this Order. The civil charge shall be paid within 30 days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall include Virginia Beach's federal identification number. Payment shall be made by check payable to the "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Virginia Beach, for good cause shown by Virginia Beach, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Virginia Beach by DEQ cited above. This Order shall not preclude the Board or the Director from taking any action

authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Virginia Beach does not admit nor deny the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Virginia Beach consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Beach declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Virginia Beach to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia Beach shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Virginia Beach shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Beach shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

condition above, which Virginia Beach intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Virginia Beach. Notwithstanding the foregoing, Virginia Beach agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Virginia Beach. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Beach from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Virginia Beach voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 21, 2004



Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

The terms of this Order are voluntarily accepted by Virginia Beach.

By: Charles W. Meyer
Charles W. Meyer, Chief Operating Officer

Date: 8 April 04

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 8th day of

April, 2004 by Charles W. Meyer, Chief Operating Officer, on behalf of the City of
Virginia Beach. *He is personally known to me.*

Karen M. Akers
Notary Public

My commission expires: January 31, 2007